



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Utamchand Baharmal Shah alias Shah Utamchand Bharmal (Deceased)
(Succession Cause E026 of 2021) [2021] KEHC 9830 (KLR) (5 November 2021) (Ruling)**

Neutral citation: [2021] KEHC 9830 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE E026 OF 2021**

JO NYARANGI, J

NOVEMBER 5, 2021

**IN THE MATTER OF THE ESTATE OF UTAMCHAND BAHARMAL
SHAH ALIAS SHAH UTAMCHAND BHARMAL (DECEASED)**

RULING

1. The deceased herein died testate on January 15, 2021 while domiciled at Mombasa. He is survived by a widow Jyotika Utamchand Shah Alias Jyotika utamchand Bharmal Shah and two children namely; Priya Utamchand Shah (daughter) and Helmal Utamchand Shah (son). The deceased executed a will dated February 18, 2009 appointing his wife (widow) as the sole executrix.
2. On April 6, 2012, the executrix petitioned for a grant of probate. A grant of probate of written will was issued on June 9, 2012. Before the expiry of six months for confirmation of the grant, the executrix filed a summons for confirmation of the grant dated August 31, 2012 seeking confirmation of the grant the expiry of six months notwithstanding.
3. The application which is anchored under section 71 (3) of the *Law of Succession Act* is supported by an affidavit sworn by the applicant on August 31, 2012. She averred that she is of poor health suffering from cancer and that due to her advanced age, she would like to distribute the estate to the dependants/beneficiaries. That there is no objection from any quarter and that the only beneficiaries entitled to the estate have consented.
4. When the application came up for hearing, the applicant basically adopted the averments contained in the affidavit in support. I have considered the application herein, affidavit in support and annexed materials. The grant herein was issued on June 9, 2021. Six months will lapse on December 9, 2021. However, under section 71 (3) of the *Law of Succession Act*, the court has the discretion to confirm a grant the expiry of six months notwithstanding if satisfied that;
 - (a)) There is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application.
 - (b) That it would be expedient in the circumstances of the case so to direct.



5. According to the will, the only dependants are the widow and the two children. They have all consented to the confirmation of grant application. It is clear that there is no objection on record. The grant is due for confirmation on December 9, 2021 which is about one month away. Taking into account the age of the applicant (70 years) and her poor health, I find it expedient to confirm the grant before the expiry of six months. It is just and fair to allow the applicant complete administration of the estate when she is able given her poor health condition.
6. Accordingly, the application is allowed as prayed. Grant of probate of written will issued on June 9, 2021 is hereby confirmed and the estate to be shared as per the annexed written will dated February 18, 2009.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 5TH DAY OF NOVEMBER, 2021.

J. N .ONYIEGO

JUDGE

